IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5719 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KOKILABEN MANILAL @ MUNNA MOHANBHAI KAHAR

Versus

COMMISSIONER OF POLICE VADODARA

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Appearance:

HL PATEL ADVOCATES for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Baroda City, Baroda, passed an order on June 26, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), against the petitioner-detenu, detaining her under the

provisions of the PASA Act.

2. The grounds of detention indicate that the detaining authority took into consideration three offences registered against the petitioner under the Bombay Prohibition Act. The detaining authority also took into consideration statements of three anonymous witnesses in respect of three incidents that occurred on May 18, 1999, May 23, 1999 and June 1, 1999. The detaining authority came to conclusion that resorting to less drastic remedy will not be efficacious enough to immediately prevent the petitioner from pursuing her activities which are detrimental to public order. The detaining authority found that the fear expressed by the anonymous witnesses is genuine and, therefore, powers under Section 9(2) of PASA Act are required to be exercised.

3. The detenu challenges the order of detention on various counts. However, the learned advocate, Mr. V.H. Patel, appearing for the petitioner restricted his arguments to the fact that the petitioner is illiterate. She was not explained the grounds of detention. It has been categorically contended in the petition and that contention has not been met with properly by the detaining authority. He submitted that the detaining authority has no personal knowledge as to what transpired while the orders and the grounds of detention were served and, therefore, the officer who served the order of detention and grounds of detention ought to have filed an affidavit to meet with the case of the petitioner that, she has not been explained the grounds of detention. In support of his argument, Mr. Patel has placed reliance on decision in the case of Pinalshah Haji Jamalshah v. State of Gujarat, 1986 GLH 108 and submitted that, on this ground alone, the petition maybe allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He has drawn attention of this Court to paragraph 7 of the affidavit in reply and submitted that the detaining authority has countered the allegation of the detenu that she was not explained the grounds of detention. Mr. Dave further submitted that an endorsement has been obtained below order as well as the grounds of detention that the order as well as the grounds of detention have been read over to the detenu and explained to her, whereafter the detenu has signed. He submitted that, in the case relied upon by Mr. Patel, no such endorsement was there and, therefore, that decision may not help the petitioner herein. He submitted that the petition may, therefore,

be dismissed.

5. The petitioner in paragraph 22 of the petition has stated as under :-

> "22. The petitioner submits that the petitioner made a representation on 28th June, 1999 wherein she has stated that she is illiterate and that the grounds of detention are not explained and that her signatures were taken on some papers and therefore, her fundamental right of the grounds of detention being communicated as guaranteed under Article 22(5) of the Constitution of India is violated."

Against this, paragraph 7 of the affidavit in reply filed by the detaining authority runs as under :-

> "7. With reference to paras 5 to 19 of the petition, I say that the detenu was supplied with the grounds of detention along with relevant materials at the time of his detention and the said documents were read over and explained to the detenu and an endorsemment to this effect is already made by the detenu. Therefore, the contention raised in this para is not tenable at law."

6. It ay be noted that the affidavit is filed by the detaining authority. Affidavit of the officer, who served the order and grounds of detention has not been filed. The petitioner is coming up with a specific allegation that her signature was obtained on some papers and that the grounds of detention were not explained to her. The endorsement below the order of detention and grounds of detention, therefore, would assume strength only if the allegation is specifically denied by the officer who served the order, who can have personal knowledge as to what transpired at the time when the order was served and, in absence of affidavit of such an officer, the contention raised by the petitioner cannot be said to have been properly et with by virtue of affidavit filed by the detaining authority with a general contention that the documents were read over and explained to the detenu and an endorsement to this effect is made by the detenu. As a result, there is non-communication of grounds of detention to the detenu which would affect the right of the detenu of making an effective representation as contemplated under Article 22(5) of the Constitution. This would vitiate the continued detention of the petitioner-detenu. The

petition, therefore, deserves to be allowed.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated June 26, 1999, passed against the petitioner-detenu is hereby quashed. The detenu-Kokilaben Manilal @ Munna Mohanbhai Kahar is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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